

en Vol 333

No. 1224

*see briefs in 1223*

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

THE OREGON AND CALIFORNIA  
RAILROAD COMPANY,

*Appellant,*

*vs.*

THE UNITED STATES OF AMERICA.

FILED  
AUG 12

TRANSCRIPT OF RECORD.

Upon Appeal from the Circuit Court of the United  
States for the District of Oregon.



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*In the Circuit Court of the United States, for the District  
of Oregon.*

THE UNITED STATES OF AMER-  
ICA,

Complainant,

vs.

THE OREGON AND CALIFORNIA  
RAILROAD COMPANY,

Defendant.

Case No. 2658.  
July 6th, 1905.

**Order Enlarging Time to File Transcript.**

Upon stipulation of parties herein by their respective  
attorneys—

It is ordered that the time of defendant in which to  
file the transcript on appeal herein in the United States  
Circuit Court of Appeals for the Ninth Circuit, be and  
the same is hereby enlarged thirty days.

JOHN J. DE HAVEN,

Judge.

[Endorsed]: No. 1224. United States Circuit Court  
of Appeals, for the Ninth Circuit. Oregon and Cali-  
fornia Railroad Company vs. United States. Order  
under Rule 16. Filed July 17, 1905. F. D. Monckton,  
Clerk.



*United States Circuit Court of Appeals, Ninth Circuit.*

UNITED STATES OF AMERICA,  
Complainant and Appellee,  
vs.  
OREGON AND CALIFORNIA RAIL-  
ROAD COMPANY,  
Defendant and Appellant.

} Case No. 2658.

**Citation.**

To the United States of America, Greeting:

The Oregon and California Railroad Company having, on this day, been granted an order of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree entered on December 12, 1904, and amended decree made and entered herein February 25, 1905, in Suit No. 2658, in the Circuit Court of the United States for the District of Oregon, brought by the United States of America as complainant against the said company; and the bond on appeal of the said company having been this day filed and approved:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on July 9th, 1905, to show cause if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, Oregon, on June 9th, 1905.

WM. B. GILBERT,  
Judge.

State of Oregon,                    )  
County of Multnomah.            ) ss.

Due service of the within citation is hereby accepted at Portland, Oregon, on June 9th, 1905, by receiving a copy thereof duly certified to as such by Wm. D. Fenton, of attorneys for defendant.

WM. W. BANKS,  
Assistant United States Attorney, of Attorneys for  
Complainant.

[Endorsed]: Original. No. 2658. United States Circuit Court of Appeals, Ninth Circuit. United States of America vs. Oregon and California Railroad Company. Citation. United States Circuit Court. Filed, June 9, 1905. J. A. Sladen, Clerk.

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*In the Circuit Court of the United States, for the District of Oregon.*

October Term, 1900.

Be it remembered, that on the 25th day of February, 1901, there was duly filed in the Circuit Court of the United States for the District of Oregon, a bill of complaint, in words and figures as follows, to wit:



*In the Circuit Court of the United States, for the District of  
Oregon.*

IN EQUITY.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE OREGON AND CALIFORNIA  
RAILROAD COMPANY,

Defendant.

**Bill of Complaint.**

To the Honorable Judges of the Circuit Court of the  
United States for the District of Oregon, Sitting  
in Equity.

The United States of America by John W. Griggs, its  
Attorney General, brings this its bill of complaint  
against the Oregon and California Railroad Company,  
a corporation organized under and by virtue of the laws  
of the State of Oregon, and a citizen of said State and  
District, and complaining says:

I.

That the Congress of the United States by an Act en-  
titled "An Act granting lands to aid in the construc-  
tion of a railroad and telegraph line from the Central  
Pacific Railroad in California to Portland, Oregon," ap-  
proved July 25th, 1866, authorized such company, or-  
ganized under the laws of Oregon, as the legislature of

said State should thereafter designate, to construct a railroad and telegraph line within the State of Oregon, beginning at the city of Portland, and running thence through the Willamette, Umpqua, and Rogue River Valleys to the southern boundary of Oregon, there to connect with another railroad authorized in said act to be built in the State of California, and granted to said Oregon Company every alternate section of public lands of the United States, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, ten on each side of said railroad; and when any of said alternate sections or parts of sections, should be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands designated as aforesaid should be selected by said company in lieu thereof under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first named alternate sections; and as soon as the said company should file in the office of the Secretary of the Interior a map of survey of said railroad, or any portion thereof not less than sixty continuous miles from either terminus, the Secretary of the Interior should withdraw from sale public lands therein granted on each side of said railroad so far as located, and within the limits above specified. And your orator would further show that by joint resolution, adopted October 20th, 1868, of the legislature of the State of Oregon, the Oregon Central Railroad Company was

designated in accordance with the said last-mentioned Act of Congress, as capable of receiving and undertaking the privileges, franchises, grants and duties above set forth and did become the corporation entitled to all the benefits and subject to all the obligations, of said Act of Congress, and that on or about April 4th, 1870, the said Oregon and California Railroad Company, a corporation duly organized and existing under the laws of the State of Oregon, became the successor and assign of said Oregon Central Railroad Company.

## II.

And your orator would further show unto your Honors, that on the 26th day of March, 1870, the officers of the Oregon and California Railroad Company definitely fixed the line of the first sixty miles of said road authorized by said Act of Congress, and filed a plat thereof in the office of the Commissioner of the General Land Office, and presented same to the then Secretary of the Interior showing among other things a route along the line authorized by said Act of Congress, approved July 25th, 1866, and the following described, among other lands in the State of Oregon, were odd-numbered sections, or parts of sections of land, not mineral, within the place limits of said proposed line of railroad as designated by said map, viz.:

The S.  $\frac{1}{2}$  of the N. E.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$ , S. E.  $\frac{1}{4}$  and N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$ , Sec. 35, T. 4 S., R. 3 E. of the Willamette meridian, amounting in all to 360 acres of land, being situated within the State of Oregon.

## III.

And your orator would further show unto your Honors, that on the 29th day of September, 1866, Alfred Jones was a duly qualified entryman as a pre-emptioner under the laws of the United States; that on the 29th day of September, 1866, he duly filed at the land office at Oregon City, Oregon, his declaratory statement No. 1845, alleging settlement thereon on the 18th day of September, 1866, with a bona fide intent to then and there acquire title under the pre-emption laws of the United States to the S. W.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of the N. W.  $\frac{1}{4}$ , and the N. W.  $\frac{1}{4}$  the S. E.  $\frac{1}{4}$ , and N. E.  $\frac{1}{4}$  of the S. W.  $\frac{1}{4}$  of Sec. 35, T. 4 S., R. 3 E. of the Wilamette meridian, which said land was then and there public lands of the United States, and subject to pre-emption entry thereunder; that said entry and filing were made prior to the date upon which the defendant filed with the Secretary of the Interior its map of definite location of the line of said road opposite to and co-terminus with said tract of land; that by the terms of the grant to defendant's predecessor the title to the said land did not pass thereunder but remained in the United States.

## IV. .

And your orator would further show unto your Honors, that on the 13th day of November 1868, Robert Welch was a duly qualified entryman as a pre-emptioner under the laws of the United States; that on the said 13th day of November, 1868, he duly filed at the land office at Oregon City, Oregon, his declaratory state-

ment No. 2202 alleging settlement thereon on November 4th, 1868, with a bona fide intent to then and there acquire title under the pre-emption laws of the United States to the S. W.  $\frac{1}{4}$ , N. E.  $\frac{1}{4}$  of S.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$  and the N. E.  $\frac{1}{4}$  of the S. W.  $\frac{1}{4}$ , Sec. 35, T. 4 S., R. 3 E. of the Willamette meridian, which said tract of land was then and there public lands of the United States and subject to pre-emption entry thereunder; that said settlement and filing was made prior to the date upon which the defendant the Oregon and California Railroad Company filed with the Secretary of the Interior of the United States its map of definite location of the line of said road opposite to and coterminus with said tract of land; that by the terms of the grant to defendant's predecessor the title to said land did not pass thereunder, but remained in the United States.

#### V.

And your orator would further show unto your Honors, that on the 8th day of February, 1869, Mathew Darr was a duly qualified entryman as a pre-emptioner under the laws of the United States; that on the said 18th day of February, 1869, he duly filed his declaratory statement at the land office at Oregon City, Oregon, No. 2231 alleging settlement thereon November the 6th, 1868, with a bona fide intent to then and there acquire title under the pre-emption laws of the United States to the S. W.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$ , and the S.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$ , and the N. E.  $\frac{1}{4}$ , of the S. W.  $\frac{1}{4}$  of Sec. 35, T. 4 S., R. 3 E. of the Willamette meridian, which said lands were



then and there public lands of the United States and subject to pre-emption entry under the laws thereof; that said settlement and filing was made prior to the date upon which the defendant, the Oregon and California Railroad Company, filed with the Secretary of the Interior of the United States its definite line of location of said road opposite to and coterminous with said tract of land; that by the terms of the grant to defendant's predecessor the title to said land did not pass thereunder but remained in the United States.

#### VI.

And your orator would further show unto your Honors, that on the 6th day of December, 1869, John W. Jackson, was a duly qualified entryman under the homestead laws of the United States; that on the said 6th day of December, 1869, he duly filed at the land office at Oregon City, Oregon, his homestead entry No. 1383 for the S. E.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$ , the E.  $\frac{1}{2}$  of the S. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$  of Sec. 35, T. 4 S., R. 3 E. of the Willamette meridian with a bona fide intent to acquire title thereto under the homestead laws of the United States; that said lands were then and there public lands of the United States and subject to entry under the homestead laws thereof; that said filing was made prior to the date upon which the defendant the Oregon and California Railroad Company filed its map of definite location opposite to and coterminus with said lands with the Secretary of the Interior of the United States; that the title to said lands did not pass

to defendant by reason of the terms of the grant to defendant's predecessor of July 25th, 1866, but that said title remained in the United States.

## VII.

And your orator would further show unto your Honors, that on the 12th day of July, 1871, the President of the United States without knowledge of the adverse claim of Alfred Jones, Robert Welch, Mathew Darr and John W. Jackson issued to defendant the Oregon and California Railroad Company a patent for the S. W.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$  and the N. W.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$ , the S.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  of the S. W.  $\frac{1}{4}$  of said Sec. 35, T. 4 S., R. 3 E. of the Willamette meridian.

## VIII.

And your orator would further show unto your Honors, that on the 18th day of July, 1877, the President of the United States without knowledge of the adverse claim of said Alfred Jones, Robert Welch, Mathew Darr and John W. Jackson issued to defendant the Oregon and California Railroad Company a patent for the S. E.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$ , and the S. E.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$  of Sec. 35, T. 4 S., R. 3 E. of the Willamette meridian.

But your ministerial officers of the United States acted mistakenly, erroneously, and contrary to law in issuing said patents for the lands described herein under the facts as stated herein, and so your orator avers that said patent to said lands is void and should be so declared, but that defendant company still claims title

to said lands under said patent and withholds said lands from your orator.

## IX.

And your orator would further show unto your Honors, that the Congress of the United States by an Act entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes," approved March 3d, 1887, directed and authorized the Secretary of the Interior to adjust all grants theretofore unadjusted, and if it should appear that any lands had been erroneously patented to any railroad company, to make demand for relinquishment or reconveyance, that if such company should refuse to reconvey within ninety days, then it should be the duty of the Attorney General to commence and prosecute in the proper Court the necessary proceedings to cancel such patents and restore title to the United States. And your orator avers that on the 28th day of July, 1900, the total grant of lands in the State of Oregon under said grant of July 25th, 1866, to said Oregon Central Railroad Company to the rights of which the said Oregon and California Railroad Company had succeeded as aforesaid, was unadjusted and the Secretary of the Interior regarding the said patents to the above-described lands as erroneously issued, directed the Commissioner of the General Land Office to request reconveyance as provided by statute, and in accordance with such direction the Commissioner of the General Land Office did on the 11th day of Septem-



ber, 1900, make demand on said railroad company, by letter addressed to William H. Mills, land agent of the Oregon and California Railroad Company, controlling the grant for said Oregon and California Railroad Company for reconveyance of said above-described lands. And your orator avers that said demand has been refused, and that said defendant company has refused and still refuses to so reconvey said lands.

X.

And your orator would further show unto your Honors on information and belief, that the defendant the Oregon and California Railroad Company claims to have sold to bona fide purchasers some of the lands hereinbefore described; that the value of the lands hereinbefore set forth and described, is the sum of \$2.50 per acre.

XI.

And your orator would further show unto your Honors, that if it shall be made to appear by answer of defendant, or intervention of parties interested or otherwise to your Honorable Court that any of said lands have been sold and conveyed to bona fide purchasers, and that the title of said bona fide purchaser or purchasers to said lands shall be confirmed, that the plaintiff shall recover of and from defendant the Oregon and California Railroad Company the sum of \$2.50 per acre for all of said lands so sold and conveyed to said bona fide purchasers.

## XII.

And your orator would further show unto your Honors that on account of the complexity of the matters to be inquired into, and as your orator is entirely remediless according to the strictest rules of the common law, and for the purpose of avoiding a multiplicity of suits, your orator brings this suit into this court, where matters of this kind are properly cognizable and relievable.

Forasmuch, therefore, as your orator can have no adequate relief except in this court, and to the end, therefore, that the said defendant may (complainant hereby waiving the necessity of an answer by said defendant company, but not under oath), to the best and utmost of its respective knowledge, remembrance and belief, full, true, direct and perfect answer make to each of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written it is required to answer, that is to say:

1. Whether any of the lands described herein have been sold to bona fide purchasers?

2. What lands, if any, herein set forth have been sold, if sales were had?

3. To whom were the lands sold, and what were the true terms of the sale, whether for cash or on deferred payments?

And your orator prays also that the moneys received by the defendant for any of the lands described herein upon sales thereof be declared to be moneys and property of the United States; and a decree that they were

held in trust by defendant, for the complainant, and that such money, to the extent of \$2.50 per acre, for the lands erroneously taken be paid to complainant, and that the lands not sold by defendant be declared to be lands of the United States, and the patents thereto be decreed to be null and void, and that your orator shall have such other and further relief as the case may require, and as shall seem meet to the Court, and as shall be agreeable to equity and good conscience.

And may it please your Honors to grant unto your orator a writ of subpoena directed to the said Oregon and California Railroad Company commanding it to appear and answer unto this bill of complaint, but not under oath (an answer under oath being hereby expressly waived), and to abide and perform such order and decree in the premises as to the Court shall seem meet and be required by the principles of equity and good conscience.

JOHN W. GRIGGS,

Attorney General of the United States.

JOHN H. HALL,

United States Attorney for the District of Oregon.

Filed February 25, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 25th day of February, 1901, there was issued out of said court a subpoena ad respondendum, in words and figures as follows, to wit:

*In the Circuit Court of the United States, for the District of Oregon.*

IN EQUITY.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

Defendant.

No. 2658.

**Subpoena ad Respondendum.**

The President of the United States of America, to The Oregon and California Railroad Company, Greeting:

You and each of you are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the city of Portland, in said District, on the first Monday of April next, which will be the first day of April, A. D. 1901, to answer the exigency of a bill of complaint exhibited and filed against you in our said court, wherein The United States of America is complainant, and you are defendant, and

further to do and receive what our said circuit court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you the marshal of said District, or your deputy, to make due service of this our writ or subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 25th day of February, in the year of our Lord, one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth.

[Seal]

J. A. SLADEN,  
Clerk.

By G. H. Marsh,  
Deputy Clerk.

Memorandum Pursuant to Equity Rule No. 12 of the Supreme Court of the United States.

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso*.

United States of America, }  
District of Oregon.        } ss.

I hereby certify that on the 26th day of February, 1901, at Portland, Multnomah County, in said District, I duly served the within subpoena ad respondendum upon the within named Oregon and California Railroad Company, by delivering to one R. Koehler, second vice-president of said company, personally a true copy of said subpoena ad respondendum duly certified to by J. A. Sladen, clerk of United States Circuit Court, together with a copy of the bill of complaint in the within entitled suit certified to be a true copy, by John H. Hall, United States Attorney for said District.

ZOETH HOUSER,

United States Marshal for said District,

By J. A. Wilson,

Deputy.

Marshal's Fees, \$4.12.

Returned and filed February 28, 1901. J. A. Sladen,  
Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 28th day of March, 1901, there was duly filed in said court, a praecipe for appearance of defendant, in words and figures as follows, to wit:

*Circuit Court of the United States, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

**Praecipe for Appearance of Defendant.**

The clerk of the Circuit Court of the United States for the District of Oregon will please enter appearance of the defendant Oregon and California Railroad Company, in the above-entitled action, by

WM. D. FENTON, and  
WM. SINGER, Jr.,  
Attorneys for the Defendant.

WM. F. HERRIN,  
Counsel for the Defendant.

Filed and entered March 28th, 1901. J. A. Sladen,  
Clerk, United States Circuit Court, District of Oregon.



And afterwards, to wit, on the 28th day of March, 1901, there was duly filed in said court, a stipulation extending time to plead, in words and figures as follows, to wit:

*Circuit Court of the United States, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-  
ROAD COMPANY,

Defendant.

Case No. 2658.

**Stipulation Extending Time to Plead.**

It is stipulated that the defendant may have until June 3d, 1901, to file its plea, demurrer or answer to the complainant's bill, in the above-entitled case; and the clerk of the said Court will please procure and enter a proper order, accordingly.

JOHN H. HALL,

United States Attorney for Oregon.

WM. D. FENTON,

Of Attorneys for Defendant.

Filed March 28th, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.



And afterwards, to wit, on the 29th day of May, 1901, there was duly filed in said court, a stipulation extending time to plead, in words and figures as follows, to wit:

*Circuit Court of the United States, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,	}	Case No. 2653.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL- ROAD COMPANY,		
Defendant.		

**Stipulation Extending Time to Plead.**

It is stipulated that the defendant may have until July 1st, 1901, to file its plea, demurrer or answer to the complainant's bill, in the above-entitled case; and the clerk of the said Court will please procure and enter a proper order accordingly.

JOHN H. HALL,

United States Attorney for Oregon.

WM. D. FENTON,

Of Attorneys for Defendant.

Filed May 29, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on Friday, the 31st day of May, 1901, the same being the 46th judicial day of the regular April term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States, for the District of  
Oregon.*

THE UNITED STATES

vs.

THE OREGON AND CALIFORNIA  
RAILROAD COMPANY.

Case No. 2658.

May 31, 1901.

**Order Extending Time to Plead.**

Now at this day comes the plaintiff herein by Mr. John H. Hall, United States Attorney, and the defendant by Mr. R. A. Leiter, of counsel, and thereupon, on motion of said defendant and upon stipulation of the parties hereto filed herein, it is ordered, that said defendant be, and it is hereby, allowed until Monday, July 1st, 1901, in which to file its answer or otherwise to plead herein.

Afterwards, to wit, on the 25th day of June, 1901, there was duly filed in said court a stipulation extending time to plead, in words and figures as follows, to wit:

*Circuit Court of the United States, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

Stipulation Extending Time to Plead.

It is stipulated that the defendant may have until August 5th, 1901, to file its plea, demurrer or answer to the complainant's bill, in the above-entitled case; and the clerk of the said court will please procure and enter a proper order accordingly.

JOHN H. HALL,  
United States Attorney for Oregon.

Filed June 25th, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 5th day of August, 1901, there was duly filed in said court, an answer, in words and figures as follows, to wit:

*United States Circuit Court, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

**Answer.**

The answer of the defendant, Oregon and California Railroad Company, to the complainant's bill of complaint herein.

The defendant, Oregon and California Railroad Company, now and at all times saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties or imperfections in the said bill of complaint, for answer thereto, or to so much thereof as the defendant is advised it is material or necessary for it to make answer to, answering:

**Sub. I.**

Par. 1. The defendant admits, and alleges, that the Congress of the United States, by an Act entitled "An

Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," approved on July 25th, 1866, authorized and empowered such company organized under the laws of Oregon as the legislature of said State should thereafter designate, to construct a railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly, through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon, where the same should connect with another railroad which the said Act authorized to be constructed in the State of California. That the said Act also granted unto such Oregon company its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and provided that when any of said alternate sections or parts of sections should be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands designated as aforesaid should be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections. And the said Act further provided, that as soon as the said company should file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion

thereof not less than sixty continuous miles from either terminus, the Secretary of the Interior should withdraw from sale the public lands by the said Act granted, on each side of the railroad so far as located; and that whenever the said company had twenty or more consecutive miles of any portion of the said railroad ready for the service contemplated, the President of the United States should appoint three commissioners to examine the same, and if it should appear that twenty consecutive miles of railroad had been completed and equipped in all respects as required, the said commissioners should so report under oath to the President of the United States, and thereupon patents should issue to the said company for the lands granted, to the extent of and coterminous with the completed section of said railroad.

Par. 2. The defendant admits, and alleges, that the Oregon Central Railroad Company is, and ever since April 22d, 1867, has been, a corporation duly organized and existing under the laws of the State of Oregon. That the legislature of the State of Oregon, by Joint Resolution, entitled "Senate Joint Resolution No. 16, Relating to the Railroad Land Grant from the Central Pacific Railroad in California, to Portland, Oregon," adopted March 20th, 1868, duly designated the said Oregon Central Railroad Company as the railroad company entitled to receive the lands granted in Oregon, and the benefits and privileges conferred, by the said Act of July 25th, 1866.

Par. 3. The defendant admits, and alleges, that it is, and ever since March 17th, 1870, has been, a corporation duly organized and existing under the laws of the State of Oregon; and admits and avers that on April 4th, 1870, it became, ever since has been, and now is, the successor and assignee of the Oregon Central Railroad Company, and entitled to all the privileges, benefits and grants in Oregon, provided by the said Act of July 25th, 1866.

Par. 4. The defendant alleges that during the year 1869, and within the time allowed by the Act of Congress, approved April 10th, 1869, entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six," the said Oregon Central Railroad Company duly filed in the department of the interior its assent to the said Act of Congress of July 25th, 1866.

Par. 5. The defendant alleges, that on October 29th, 1869, the said Oregon Central Railroad Company filed in the office of the Secretary of the Interior, and on January 29th, 1870, the Secretary of the Interior accepted and approved, a map of the definite location and survey of the first section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from Portland to a point at or near Jefferson, and comprised not less than sixty continuous miles from the northern terminus thereof.

Par. 6. The defendant alleges that on March 26th,



1870, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the second section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point at or near Jefferson, to a point near the southeast corner of section 35, in township 27 south, range 6 east, Willamette meridian, and comprised not less than one hundred and twenty continuous miles of railroad from Jefferson; that on January 7th, 1871, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the third section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point near the southeast corner of section 35, in township 27 south, range 6 west, to section 30, in township 30 south, range 5 west; that on April 6th, 1822, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, an amended map of the definite location and survey of the said third section of railroad, which amended line of railroad extended from a point in section 28, township 29 south, range 5 west, to Station 1320+50 in section 6, township 30 south, range 5 west; that on April 6th, 1882, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and



approved, a map of the definite location and survey of the fourth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said Station 1320+50 in section 6, township 30 south, range 5 west, to Station 2376+50 in township 31 south, range 7 west; that on July 27th, 1882, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the fifth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said Station 2376+50 in township 31 south, range 7 west, to a point in section 33, township 34 south, range 6 west; that on June 6th, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the sixth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point in section 33, township 34 south, range 6 west, to a point in section 21, township 36 south, range 3 west; that on July 3d, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior duly accepted and approved, a map of the definite location and survey of the seventh section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point in section 21, township

36 south, range 3 west, to the south line of section 32, township 37 south, range 1 west; that on September 6th, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted, a map of the definite location and survey of the eighth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the south line of section 32, township 37 south, range 1 west, to the east line of section 25, township 39 south, range 1 east; that on August 2d, 1883, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the ninth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point on the east line of section 25, township 39 south, range 1 east, to the north line of section 30, township 40 south, range 3 east; and that on August 20th, 1884, it (this defendant) filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the tenth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point on the north line of section 30, township 40 south, range 2 east, to the southern line of the State of Oregon, in section 13, township 41 south, range 1 east.

Par. 7. The defendant alleges, that the Commis-

sioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all odd-numbered sections of land within thirty miles on each side of the line of railroad shown on the maps set forth and described in "Par. 6" hereof, from sale or location, pre-emption or homestead entry, on the following dates: Opposite and coterminous with, the said first section of railroad, on January 31st, 1870; opposite, and coterminous with, the said second section of railroad, on April 7th, 1870; opposite, and coterminous with, the said third section of railroad, on March 31st, 1871; opposite, and coterminous with, the said amended section of railroad, on July 5th, 1883; opposite, and coterminous with, the said fourth section of railroad, on July 5th, 1883; opposite, and coterminous with, the said fifth section of railroad, on July 5th 1883; opposite, and coterminous with, the said sixth section of railroad, on July 5th, 1883; opposite, and coterminous with, the said seventh section of railroad, on September 3d, 1883; opposite, and coterminous with, the said eighth section of railroad, on October 27th, 1883; opposite and coterminous with, the said ninth section of railroad, on October 27th, 1883; and opposite, and coterminous with, the said tenth section of railroad, on December 19th, 1884. And the defendant alleges that the said withdrawals by the Commissioner have, each and all, remained in full force and effect from the date thereof continuously to and including the present time, except in so far as, if at all, they have been affected by an order of the Secretary of the Interior, made on August 15th, 1887, declaring

said withdrawals revoked as to the odd-numbered sections within the indemnity limits of the grant made by the said Act of July 25th, 1866.

Par. 8. The defendant alleges that the entire railroad contemplated and provided for by the said Act of July 25th, 1866, along the lines shown on the maps set forth and described in "Par. 6" hereof, was constructed in several sections and fully equipped in all respects as required by the said Act of July 25th, 1866, by the said Oregon Central Railroad Company and this defendant; and Commissioners, duly appointed by the President of the United States for that purpose, duly examined the said railroad as completed and equipped in the several sections aforesaid, and duly reported to the President of the United States, under oath, that each of said sections of railroad had been completed and equipped in all respects as required by the said Act of Congress, and that the same was and were ready for the service contemplated by the said Act; which reports were duly accepted and approved by the President of the United States. The said reports were so made, accepted and approved, on the following dates: The first twenty miles, commencing at Portland, report made on December 31st, 1869, accepted and approved on January 29th, 1870; the second twenty miles, report made on July 5th, 1870; accepted and approved on February 28th, 1871; third twenty miles and fourth twenty miles, report made on December 10th, 1870, accepted and approved on February 28th, 1871; fifth twenty miles, report made on August 11th, 1871, accepted and approved on March

11th, 1872; sixth twenty miles, report made on January 13th, 1872, accepted and approved on March 11th, 1872; seventh, eighth and ninth sections, including the last seventy-eight miles of the said railroad from Portland to Roseburg, report made on July 10th, 1878, accepted and approved on July 11th, 1878; from Roseburg to the south boundary line of Oregon, in several sections, reports made and approved as the railroad was completed and examined in sections, during the years 1873 to 1889.

Sub. II.

Par. 9. The defendant admits that the first sixty miles of its railroad was definitely fixed and a plat thereof duly filed, but denies that the date thereof was or is March 26, 1870, as alleged in the bill of complaint herein, and alleges that the true particulars in this behalf are as set forth in Sub. I, Par. 5, of this answer; and the defendant admits that all the lands described in subdivision II of the bill of complaint herein, are odd-numbered sections, or parts of odd-numbered sections, of land, not mineral, within the primary limits of the land grant made by the said Act of July 25th, 1866.

Sub. III.

Par. 10. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision III of the bill of complaint herein, are as follows: The SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$  (not SW.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$ , as erroneously set forth in subdivision III of the bill of complaint), NW.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$  and NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of section 35, township 4 south, range 3 east,



are parts of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and are opposite and coterminous with the section of this defendant's railroad which was definitely located on October 29th, 1867, the construction of which was finally accepted and approved on January 29th, 1870. On September 29th, 1866, pre-emption declaratory statement No. 1845, in the name of Alfred Jones, was filed for the said land in the United States land office at Oregon City, Oregon; but the said lot was never pre-empted, in pursuance of the said filing, or otherwise. But the defendant denies that the said land was public land subject to pre-emption entry at any time after July 25th, 1866, and denies that by the terms of the grant made by the said Act of July 25th, 1866, the said land did not pass thereunder, but remained in the United States. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act, and whatsoever title the United States held for the same at any time after approval of the said granting Act was held in trust for this defendant and its predecessor in interest, the Oregon Central Railroad Company.

Par. 11. The defendant has no knowledge nor information as to the matters and things set forth in subdivision III of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint are in any wise true.

## Sub. IV.

Par. 12. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision IV of the bill of complaint herein, are as follows: The SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$  and NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  (not SW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  of S.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$  and NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$ , as erroneously set forth in subdivision IV of the bill of complaint) of section 35, township 4 south, range 3 east, are parts of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and are opposite and co-terminous with the section of this defendant's railroad which was definitely located on October 29th, 1869, the construction of which was finally accepted and approved on January 29th, 1870. On November 13th, 1868, pre-emption declaratory statement No. 2202, in the name of Robert Welch, was filed for the said land in the United States land office at Oregon City, Oregon; but the said land was never pre-empted, in pursuance of the said filing, or otherwise. But the defendant denies that the said land was public land subject to pre-emption entry at any time after July 25th, 1866, and denies that by the terms of the grant made by the said Act of July 25th, 1866 the said land did not pass thereunder, but remained in the United States. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act, and whatsoever title the United States held for the same at any time after approval of the said

granting Act, was held in trust for this defendant and its predecessor in interest, the Oregon Central Railroad Company.

Par. 13. The defendant has no knowledge nor information as to the matters and things set forth in subdivision IV of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any such matters and things, as set forth in the bill of complaint are in anywise true.

Sub. V.

Par. 14. The defendant alleges that the true facts and particulars respecting the matters and things set forth in subdivision V of the bill of complaint herein, are as follows: The SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$  and NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of section 35, township 4 south, range 3 east, are parts of an odd section of land within the primary limits of the grant made by the said Act of July 25th, 1866, and are opposite and coterminous with the section of this defendant's railroad which was definitely located on October 29th, 1869, the construction of which was finally accepted and approved on January 29th, 1870. On February 18th, 1869, pre-emption declaratory statement No. 2202 in the name of Matthew Darr, was filed for the said land in the United States Land Office at Oregon City, Oregon; but the said land was never pre-empted, in pursuance of the said filing, or otherwise. But the defendant denies that the said land was public land subject to pre-emption entry at



any time after July 26th, 1866, and denies that by the terms of the grant made by the said Act of July 25th, 1866, the said land did not pass thereunder, but remained in the United States. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act, and whatsoever title the United States held for the same at any time after approval of the said granting Act, was held in trust for this defendant and its predecessor in interest, the Oregon Central Railroad Company.

Par. 15. The defendant has no knowledge nor information as to the matters and things set forth in subdivision V of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

#### Sub. VI.

Par. 16. The defendant admits that the SE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of SE.  $\frac{1}{4}$  and SW.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$  of section 35, township 4 south, range 3 east, was covered by homestead No. 1383, in the name of John W. Jackson, filed in the proper land office of the United States on December 6th, 1869; but alleges, on information and belief, that the said Jackson did not occupy the said land as a homestead settler, or otherwise at the date its (defendant's) railroad was definitely located opposite and co-terminous with, the said land. The defendant denies that the said land was public land subject to homestead

entry at any time after July 26th, 1866, and denies that by the terms of the grant made by the said Act of July 25th, 1866, the said land did not pass thereunder, but remained in the United States. And in this behalf the defendant alleges that the said land constituted a part and parcel of the lands granted by the said Act, and whatsoever title the United States held for the same at any time after approval of the said granting Act, was held in trust for this defendant and its predecessor in interest, the Oregon Central Railroad Company.

Par. 17. The defendant has no knowledge nor information as to the matters and things set forth in subdivision VI of the bill of complaint herein, not expressly admitted, denied or alleged in the next preceding paragraph of this answer, and on that ground denies that any of such matters and things, as set forth in the bill of complaint, are in anywise true.

#### Sub. VII.

Par. 18. The defendant admits that on July 12th, 1871, the proper officers of the United States issued to it (defendant) a patent for the lands described in subdivision VII of the bill of complaint herein; but alleges that the NW.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of section 35, included in said description, is nowise involved in this suit. The defendant denies that Alfred Jones, Robert Welch, Matthew Darr or John W. Jackson, either or any of them, had an adverse claim to the said land, or any part thereof, at the time, or before, said patent issued, or that the President of the United States issued said

patent without knowledge of the said filings of Alfred Jones, Robert Welch, Matthew Darr and John W. Jackson.

Sub. VIII.

Par. 19. The defendant admits that on July 18th, 1877, the proper officers of the United States issued to it (defendant) a patent for the lands described in subdivision VIII of the bill of complaint herein. But the defendant denies that Alfred Jones, Robert Welch, Matthew Darr or John W. Jackson, either or any of them, had an adverse claim to the said land, or any part thereof, at the time, or before, said patent issued, or that the President of the United States issued said patent without knowledge of the said filings of Alfred Jones, Robert Welch, Matthew Darr and John W. Jackson. The defendant denies that the United States acted mistakenly, erroneously, or contrary to the law in issuing the said patent, or that the said patent is void; but admits that it (defendant) and its grantees and successors in interest hereinafter mentioned, claim title to the said land under the said grant and patent.

Sub. IX.

Par. 20. The defendant alleges that, including all the lands described in the bill of complaint herein, it (defendant) has not received the full quantity of land provided in the grant made by the said Act of July 25th, 1866.

Sub. X.

Par. 21. The defendant denies that on September 11th, 1900, or at any time, the Commissioner of the

General Land Office made demand on it (defendant) by letter addressed to William H. Mills, or otherwise, for reconveyance of any land described in the bill of complaint herein; but as to the other matters and things set forth in subdivision IX of the bill of complaint (other than the Act of Congress there referred to) this defendant has no knowledge or information, and on that ground denies that such matters and things are in anywise true, as set forth in the bill of complaint.

Sub. XI.

Par. 22. The defendant denies that the value of the lands described in the bill of complaint is \$2.50 per acre, or any sum in excess of \$1.25 per acre. But the defendant admits, and alleges, that it has sold to bona fide purchasers all of the lands described in the bill of complaint, as follows: On June 19th, 1878, by deed bearing that date, this defendant sold and conveyed the SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$  and SE.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$  of the said section 35, unto George Welch; and on or about December 28th, 1887, this defendant sold and by deed conveyed the SE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$ , and NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of said section 35, unto S. W. R. Jones. That each of the said sales and purchases were made in good faith, for full value of the lands sold in hand paid at the date of the said deeds without notice to or knowledge of this defendant or either of the said purchasers that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the said lands, or any part thereof, and each of the said purchasers was and is a bona fide purchaser of the lands so purchased.

## Sub. XII.

Par. 23. The defendant denies that the complainant is entitled to recover from it (defendant) the sum of \$2.50 per acre, or any other sum, for any lands described in the bill of complaint and sold by it (defendant) to bona fide purchasers; and the defendant alleges, upon information and belief, that this court has no jurisdiction of any demand for judgment in money, sought to be made by the bill of complaint herein.

## Sub. XIII.

Par. 24. The defendant denies that there is any complexity in or of matters to be inquired into herein; and denies that on account of the complexity of the matters to be inquired into, or on any account, complainant is remediless according to the rules of the common law; and denies that for such reasons, on such account and for, or for the purpose of avoiding a multiplicity of suits, the complainant brought this suit in this court. And in this behalf the defendant alleges, on information and belief, that this court has no jurisdiction of any matters and things set forth in the bill of complaint, except in so far as such matters and things relate to the cancellation of patents for lands which have not been sold by this defendant to bona fide purchasers; and as to all other matters and things set forth in the bill of complaint in so far as, if at all, they state or make out any cause or causes of action, the complainant has a complete, speedy and adequate remedy by a single action of law.

## Sub. XIV.

Par. 25. And the defendant denies all and all manner of matter, cause, or thing in the complainant's said bill contained, material or necessary for it to make answer to and not herein well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of the defendant. All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court may direct; and the defendant prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

WM. D. FENTON and  
WM. SINGER, Jr.,  
Attorneys for the Defendant.

WM. F. HERRIN,  
Counsel for the Defendant.

District of Oregon, }  
Multnomah County. } ss.

Geo. H. Andrews makes solemn oath and says: I am secretary of the Oregon and California Railroad Company, the defendant named in the foregoing answer. I have read the foregoing answer and know the contents thereof, and the same is true of my knowledge, except as to the matters therein stated on information and belief and as to such matters I verily believe the answer to be true.

GEORGE H. ANDREWS.



Subscribed and sworn to before me on August 5th,  
1901.

R. A. LEITER,  
Notary Public for Oregon.

State of Oregon,                    }  
County of Multnomah.        } ss.

Due service of the within answer is hereby accepted  
in Multnomah County, Oregon, this 5th day of August,  
1901, by receiving a copy thereof duly certified to as  
such by Wm. D. Fenton, of attorneys for defendant.

JOHN H. HALL,  
Attorney for Complainant.

Filed August 5th, 1901. J. A. Sladen, Clerk, United  
States Circuit Court, District of Oregon.

And afterwards, to wit, on the 8th day of August, 1901, there was duly filed in said court, a replication, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of  
Oregon.*

IN EQUITY.

UNITED STATES,

Plaintiff,

vs.

THE OREGON AND CALIFORNIA  
RAILROAD COMPANY,

Defendant.

No. 2658.

**Replication.**

Replication of John H. Hall, District Attorney for the United States for the District of Oregon, who prosecutes for the said United States in this behalf to the answer of defendant.

This replicant, for the said United States, saving and reserving all advantage of exception to the said answer, for replication thereunto says, that he, for the said United States, will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this replicant. Without this, that any other matter or thing whatsoever in



the said answer contained. material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true. All which matter and things this replicant, for the said United States, is and will be ready to aver and prove, as this Honorable Court shall direct; and for the said United States he prays as in and by his said bill he has already prayed.

JOHN H. HALL,  
United States Attorney.

Filed August 8th, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards to wit, on the 6th day of October, 1902, there was duly filed in said court a stipulation of facts in words and figures as follows, to wit:

*United States Circuit Court, District of Oregon.*

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL- ROAD COMPANY,	}	
Defendant.		

**Stipulation of Facts.**

It is stipulated and agreed as follows:

Item 1. The Act of Congress approved July 25th, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the

Central Pacific Railroad in California, to Portland, in Oregon," as printed in volume 14 of the United States Statutes at Large, on pages 239 and following, is admitted in evidence.

Item 2. The Oregon Central Railroad Company is a corporation duly incorporated and organized on April 22d, 1867, by and in virtue of the laws of the State of Oregon.

Item 3. That the legislature of the State of Oregon, by its Joint Resolution adopted October 20th, 1868, duly designated the said Oregon Central Railroad Company as the company entitled to receive the lands granted in Oregon, and the benefits and privileges conferred, by the Act of Congress referred to in "Item 1" hereof; and prior to the year 1869 the said company duly became entitled to all the benefits, privileges, and grants in the State of Oregon, mentioned in or offered by the said Act of Congress.

Item 4. The Act of Congress approved June 25th, 1868, entitled "An Act to amend an act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California to Portland, in Oregon,'" as printed in volume 15 of the United States Statutes at Large, on page 80, is admitted in evidence.

Item 5. The Act of Congress approved April 10th, 1869, entitled "An Act to amend an act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland in Oregon,' approved

July twenty-five, eighteen hundred and sixty-six," as printed in volume 16 of the United States Statutes at Large, on page 47, is admitted in evidence.

Item 6. That on or about July 1st, 1869, the said Oregon Central Railroad Company duly filed in the department of the Interior its assent to the act of Congress referred to in "Item 1" hereof.

Item 7. On October 29th, 1869, the said Oregon Central Railroad Company filed in the office of the Secretary of the Interior, and on January 29th, 1870, the Secretary of the Interior duly accepted and approved, a map of the definite location and survey of the first section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from Portland to a point at or near Jefferson, and comprised not less than sixty continuous miles from the northern terminus thereof.

Item 8. On March 26th, 1870, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on March 29th, 1870, duly accepted and approved, maps of the definite location and survey of the second section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point at or near Jefferson, to a point on the south line of township 27 south, range 6 west, Willamette meridian, and comprised not less than one hundred and twenty continuous miles of railroad from Jefferson; on January 7th, 1871, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on March

2d, 1871, duly accepted and approved, a map of the definite location and survey of the third section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point on the south line of township 27 south, range 6 west, to a point in section 30, in township 30 south, range 5 west; on April 6th, 1882, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on April 8th, 1882, duly accepted and approved, an amended map of the definite location and survey of the said third section of railroad, which amended line of railroad extended from Station 1154 in section 28, township 29 south, range 5 west, to Station 1320+50 in section 6, township 30 south, range 5 west; on April 6th, 1882, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on April 8th, 1882, duly accepted and approved, a map of the definite location and survey of the fourth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said Station 1320+50 in section 6, township 30, range 5 west, to Station 2376+50 in township 31 south, range 7 west; on August 24th, 1882, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on September 7th, 1882, duly accepted and approved, a map of the definite location and survey of the fifth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said Station 2376+50 in township 31

south, range 7 west, to the north line of section 33, township 34 south, range 6 west; on June 6th, 1883, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the sixth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said north line of section 33, township 34 south, range 6 west, to the east line of section 21, township 36 south, range 3 west; on July 3d, 1883, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on July 6th, 1883, duly accepted and approved, a map of the definite location and survey of the seventh section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said east line of section 21, township 36 south, range 3 west, to the south line of section 32, township 37 south, range 1 west; on September 4th, 1883, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the eighth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the south line of section 32, township 37 south, range 1 west, to the east line of section 25, township 39 south, range 1 west; on August 1st, 1883, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day



duly accepted and approved, a map of the definite location and survey of the ninth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point on the east line of section 25, township 39 south, range 1 east, to the north line of section 30, township 40 south range 2 east; and on August 18th, 1884, the defendant filed in the office of the Secretary of the Interior, and the Secretary of the Interior on that day duly accepted and approved, a map of the definite location and survey of the tenth section of the railroad in Oregon provided for by the said Act of July 25th, 1866, which section of railroad extended from the said point on the north line of section 30, township 40 south, range 2 east, to the southern line of the State of Oregon, in section 13, township 41 south, range 1 east.

Item. 9. The Commissioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all odd numbered sections of land within thirty miles on each side of the line of railroad shown on the maps set forth and described in Item 8 hereof. from sale or location, pre-emption or homestead entry, on the following dates; opposite and coterminous with, the said first section of railroad, on January 31st, 1870; opposite and coterminous with, the said second section of railroad, on April 7th, 1870; opposite and coterminous with, the said third section of railroad, on March 31st, 1871; opposite and coterminous with, the said amended section of railroad, on July 5th, 1883; opposite, and coterminous with, the said fourth section of



railroad, on July 5th, 1883; opposite, and coterminous with, the said fifth section of railroad, on July 5th, 1883; opposite and coterminous with, the said sixth section of railroad, on July 5th, 1883; opposite, and coterminous with, the said seventh section of railroad, on September 3d, 1883; opposite, and coterminous with, the said eighth section of railroad, on October 27th, 1883; opposite, and coterminous with, the said ninth section of railroad, on October 27th, 1883; and opposite, and coterminous with, the said fourth section of railroad, on December 19th, 1884. And the said withdrawals by the Commissioners have, each and all, remained in full force and effect from the date thereof continuously and including the present time, except in so far as, if at all, they have been affected by an order by the Secretary of the Interior, made on August 15th, 1887, declaring said withdrawals revoked as to the odd numbered sections within the indemnity limits of the grant made by the said Act of July 25th, 1866.

Item 10. The entire railroad contemplated and provided for by the said Act of July 25th, 1866, along the line shown on the maps set forth and described in Item 8 hereof, was constructed in several sections and fully equipped in all respects as required by the said Act of July 25th, 1866, by the said Oregon Central Railroad Company and this defendant; and Commissioners, duly appointed by the President of the United States for that purpose, duly examined the said railroad as completed and equipped in the several sections aforesaid, and duly reported to the President of the United

States, under oath, that each of said sections of railroad had been completed and equipped in all respects as required by the said Act of Congress, and that the same was and were ready for the service contemplated by the said Act; which reports were duly accepted and approved by the President of the United States. The said reports were so made, accepted and approved, on the following dates: The first twenty miles, commencing at Portland, report made on December 31st, 1869, accepted and approved on January 29th, 1870; the second twenty miles, report made on September 28th, 1870, accepted and approved on February 28th, 1871; third twenty miles and fourth twenty miles, report made on December 10th, 1870, accepted and approved on February 28th, 1871; fifth twenty miles, report made on August 11th, 1871, accepted and approved on March 11th, 1872; sixth twenty miles, report made on January 13th, 1872, accepted and approved on March 11th, 1872; seventh, eighth and ninth sections, including the last seventy-eight miles of the said railroad from Portland to Roseburg, report made on July 10th, 1878, accepted and approved July 11th, 1878; from Roseburg to the south boundary line of Oregon, in several sections, reports made and approved as the railroad was completed and examined in sections, during the years 1878 to 1889.

Item 11. The S.  $\frac{1}{2}$  of NE.  $\frac{1}{4}$ , the S.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$ , the SE.  $\frac{1}{4}$ , and the E.  $\frac{1}{2}$  of SW.  $\frac{1}{4}$  of section 35, in township 4 south, range 3 east, Willamette meridian, are parts

of an odd numbered section of unoffered land within the primary limits of the grant made by the said Act of July 25th, 1866 and are opposite and coterminous with that section of the defendant's railroad the map of definite location and survey of which was filed with the Secretary of the Interior on October 29th, 1869, and approved by the Secretary of Interior on January 29th, 1870.

(a) On September 29th, 1867, one Alfred Jones filed his pre-emption declaratory statement No. 1845, in the proper land office of the United States, for the SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$  and NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of said section 35, alleging settlement thereon on September 18th, 1866; which declaratory statement was on file and of record, uncanceled, in the said land office at the several times when the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made under or in pursuance of the said filing.

(b). On November 13th, 1868, one Robert Welch filed his pre-emption declaratory statement No. 2202, in the proper land office of the United States, for the SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , the S.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$  and the NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of the said section 35, alleging settlement thereon on November 4th, 1868, which declaratory statement was on file and of record, uncanceled, in the said land office, at the several times when the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made under or in pursuance of the said filing.

(c). On February 8th, 1869, one Matthew Darr filed his pre-emption declaratory statement No. 2231, in the proper land office of the United States, for the land described in the next preceding paragraph hereof, alleging settlement thereon on November 6th, 1868; which declaratory statement was on file and of record, uncanceled, in the said land office, at the several times when the map referred to in the next preceding paragraph hereof was filed and approved; but the final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(d). On December 6th, 1869, one John W. Jackson filed his homestead claim No. 1383, in the proper land office of the United States, for the SE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  of SE.  $\frac{1}{4}$  and SW.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$  of the said section 35; which homestead claim was on file and of record, uncanceled, in the said land office, at the time when the map referred to in the next preceding paragraph hereof was filed and approved; but final proof or payment was never tendered nor made, under or in pursuance of the said filing.

(e). On July 12th, 1871, and June 18th, 1877, the proper officers of the United States issued two several patents, in due form, together purporting to convey all the lands in this "Item 11" described unto the defendant, as parts and portions of the lands granted by the said Act of July 25th, 1866; which patents were duly and properly issued unless the pre-emption filings and homestead filing hereinbefore set forth excepted the

said lands from the lands granted by the said Act of July 25th, 1866.

(f). On January 19th, 1878, the defendant sold and by deed conveyed, the SW.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$  and SE.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$  of the said section 35 unto George Welch for the sum of one hundred and eighty dollars; and on or about December 28th, 1887, the defendant sold and by deed conveyed, the SE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ , the SW.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$ , the SE.  $\frac{1}{4}$  and the NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  of the said section 35, unto S. W. R. Jones, a citizen of the United States, for the sum of six hundred and seventy-five dollars; each of which sales and purchases were made in good faith, for value of the lands sold, without notice to either of the said purchasers, other than such presumptive notice as given by the law, of the existence of the said homestead filing or pre-emption filings, or any thereof.

Item 12. The grant made by the said Act of July 25th, 1866, is in course of adjustment by the Secretary of the Interior and the proper officers of the United States, but has not been finally adjusted; and, including all the lands described in the bill of complaint herein, the defendant has not received the full quantity of land promised in the grant made by the said Act of July 25th, 1866.

Item 13. It is further agreed that this stipulation is, and shall always be deemed, conclusive evidence, for the purposes of this suit, of the truth of all the matters and things in it stipulated and agreed to be true, as fully and effectually as if each and all of such matters and things were, or had been, conclusively proven by the



introduction and the testimony of witnesses; but each party reserves the right to introduce further and additional testimony and evidence.

Dated and signed on October 6th, 1902.

JOHN H. HALL,  
United States Attorney for Oregon.

WM. D. FENTON and  
WM. SINGER, Jr.,  
Attorneys for the Defendant.

H. M. HOYT,  
Acting United States Attorney-General.

Filed October 6th, 1902. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on the 3d day of December, 1902, there was duly filed in said court, a stipulation submitting case, in words and figures as follows, to wit:

*United States Circuit Court, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-  
ROAD COMPANY,

Defendant.

Case No. 2658.

**Stipulation Submitting Case.**

It is stipulated and agreed that this case may be submitted on the pleadings, stipulation of facts, papers on



file and orders made in the case, and briefs to be filed within sixty days by the complainant and within sixty days thereafter by the defendant.

Dated and signed on December 20th, 1902.

JOHN H. HALL  
United States Attorney for Oregon.  
WM. D. FENTON and  
WM. SINGER, Jr.,  
Attorneys for the Defendant.

Filed December 3d, 1902. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on Monday, the 12th day of December, 1904, the same being the 61st judicial day of the regular October term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States, for the District of Oregon.*

UNITED STATES OF AMERICA,	}	No. 2658. Dec. 12, 1904.
Complainant,		
vs.		
THE OREGON AND CALIFORNIA RAILROAD COMPANY,		
Defendant. f		

**Decree.**

The above-entitled suit having been heretofore duly tried and submitted to the Court upon a stipulated

statement of facts, signed by the respective parties, and by the Court taken under advisement until this time, and now at this time the Court being fully advised as to the law and the facts.

It is considered, adjudged and decreed, that the plaintiff have and recover from the defendant the sum of \$500.00, being the full value of the lands described in plaintiff's complaint, and for which the patents thereto were sought to be canceled, at the minimum price of \$1.25 per acre; and that plaintiff have and recover of and from defendant its costs and disbursements of this suit, taxed at \$——, and that execution issue therefor.

CHARLES B. BELLINGER,

Judge.

Filed December 12th, 1904. J. A. Sladen, Clerk,  
United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 12th day of December, 1904, there was duly filed in said court, an opinion, in words and figures as follows, to wit:

*In the Circuit Court of the United States, for the District of Oregon.*

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL- ROAD COMPANY		
Defendant.		

**Opinion.**

JOHN H. HALL, for the Complainant.

WM. D. FENTON and WM. SINGER, Jr., for the Defendant.

BELLINGER, J.—The decision in case No. 2657, is decisive of this case. All the lands in question were sold by the defendant to bona fide purchasers. There must be a decree for the value of the lands sold, and it is so ordered.

Filed December 12th, 1904. J. A. Sladen, Clerk,  
United States Circuit Court, District of Oregon.

And afterwards, to wit, on Tuesday, the 28th day of February, 1905, the same being the 127th judicial day of the regular October term of said court— Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States, for the District of Oregon.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

Defendant.

No. 2658.  
Feb. 28th, 1905.

**Amended Decree.**

Now, at this day, this cause comes on to be heard upon motion of defendant to correct the decree herein heretofore entered in said cause December 12th, 1904, the complainant appearing by W. W. Banks, Assistant United States Attorney, and the defendant appearing by Wm. D. Fenton, its attorney—

Whereupon, it is ordered, adjudged, and decreed, that the said decree of December 12th, 1904, be amended as follows:

It is considered, adjudged, and decreed, that the plaintiff have and recover of and from the defendant the sum of \$450.00, being the full value of the lands described in plaintiff's complaint and for which the patents thereto were sought to be canceled, at the minimum price of \$1.25 per acre; and that plaintiff have and recover of and from the defendant its costs and disbursements of this suit, taxed at \$40.82, and that execution issue therefor.

CHARLES B. BELLINGER,  
Judge.

Filed February 28, 1905. J. A. Sladen, Clerk.



And afterwards, to wit, on the 14th day of March, 1905, there was duly filed in said court, a cost-bill in words and figures as follows, to wit:

*In the Circuit Court of the United States, for the District of Oregon.*

UNITED STATES

vs.

OREGON AND CALIFORNIA RAIL-  
ROAD COMPANY.

} No. 2658.  
March 14, 1905.

**Cost-bill.**

Statement of disbursements claimed by the complainant in the above-entitled cause, viz:

Clerk's fees .....	\$16.70
Marshal's fees .....	4.12
Costs in State Circuit Court .....	
Attorneys' fee .....	20.00
Attorney's fee for taking ——Depositions, at \$2.50 each .....	
Depositions .....	
Examiner's fees .....	
Referee's fees .....	
Witness' fees .....	
	—————
Total taxed at .....	40.82

J. A. SLADEN,  
Clerk.

By G. H. Marsh,  
Deputy.

District of Oregon—ss.

I, Wm. W. Banks, Assistant United States Attorney, being duly sworn, on my oath say that I am one of the attorneys for the complainant in the above-entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit; and that said complainant is entitled to recover the same from the defendant O. & C. R. R. Co., as I verily believe.

WM. W. BANKS.



Subscribed and sworn to before me this March 14, 1905.

J. A. SLADEN,  
Clerk.

By G. H. Marsh,  
Deputy Clerk.

Filed March 14, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on the 9th day of June, 1905, there was duly filed in said court, a petition for appeal, in words and figures as follows, to wit:

*United States Circuit Court, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-  
ROAD COMPANY,

Defendant.

Case No. 2658.

**Petition for Appeal.**

The defendant, conceiving itself aggrieved by the decree made and entered herein on December 12, 1904, and amended decree made and entered herein February 25th, 1905, giving judgment for plaintiff, hereby appeals from the said decree to the United States Circuit

Court of Appeals for the Ninth Circuit; and files herewith its assignment of errors asserted and intended to be urged on appeal.

The defendant prays an order of this Court staying all further proceedings upon the said decree pending this appeal, upon its (defendant's) giving a good and sufficient bond to be approved by this court.

WM. D. FENTON and  
WM. SINGER, Jr.,  
Attorneys for Defendant.

State of Oregon,      )  
District of Oregon. } ss.                                   :

Due service of the within petition for appeal is hereby accepted in said district and admitted to have been made upon complainant herein this 9th day of June, 1905, by receiving a copy thereof duly certified to as such by Wm. D. Fenton, one of attorneys for defendant.

WM. W. BANKS,  
Assistant United States Attorney and Attorney for  
Complainant.

Filed June 9th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 9th day of June, 1905, there was duly filed in said court, an assignment of errors on appeal, in words and figures as follows, to wit:

*United States Circuit Court, District of Oregon.*

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.	}	
OREGON AND CALIFORNIA RAIL-		
ROAD COMPANY,		
Defendant.		

**Assignment of Errors.**

In connection with its petition for allowance of appeal herein, the defendant makes and files this assignment of errors made by the Court in its decree entered herein on December 12, 1904, and amended decree made and entered herein February 25, 1905.

**I.**

1st. That the cause of action, if any, shown by the bill of complaint and proofs, is in assumpsit, at law; and this Court erred in assuming, or exercising, equity jurisdiction of or over the subject matter.

**II.**

2d. That the Court erred in holding, adjudging or decreeing, that the word "pre-empted," used in the Act

of Congress of July 25th, 1866, granting lands to the defendant, to designate lands excepted from that grant, meant or included lands for which mere pre-emption declaratory statements had been filed.

3d. That the Court erred in holding, adjudging or decreeing, that lands covered by pre-emption declaratory statements filings at time of definite location of the defendant's railroad, were by such mere filings excepted from the defendant's grant as lands pre-empted."

4th. That the Court erred in presuming that all, or any, persons who filed pre-emption declaratory statements for lands described in the bill of complaint herein, were settlers on or who had improved the lands filed for.

5th. That the Court erred in concluding that pre-emption declaratory statements are not permitted to be filed without proof of settlement on and improvement of the land by the person filing; and herein that the Court erred in not taking judicial notice of the Interior Department rules and regulations permitting such filings to be made without any proof.

### III.

6th. That the Court erred in holding, adjudging or decreeing that the words "occupied by homestead settlers," used in the said Act of July 25th, 1866, to designate lands excepted from the grant to the defendant, meant or included lands covered by mere homestead filings, made by persons who did not occupy and were not settlers on the lands filed for.

7th. That the Court erred in holding, adjudging or decreeing that lands covered by homestead filings at time of definite location of the defendant's railroad were by such mere filings excepted from the defendant's grant as lands "occupied by homestead settlers."

8th. That the Court erred in holding, adjudging or decreeing that the words "otherwise disposed of," used in the said Act of July 25th, 1866, to designate lands excepted from the grant to the defendant, meant or included lands covered by mere homestead filings, of persons not shown to have settled on or occupied such lands.

9th. That the Court erred in holding, adjudging or decreeing that lands covered by homestead filings at time of definite location of the defendant's railroad were by such mere filings excepted from the defendant's grant as lands "otherwise disposed of."

#### IV.

10th. That the Court erred in deciding, adjudging or decreeing that any patent issued to the defendant for lands described in the bill of complaint was issued erroneously, inadvertently, or by mistake.

#### V.

11th. That the Court erred in deciding, or adjudging that the defendant is indebted to the complainant in any sum whatever, or at all, because of any demand or obligation shown by the bill of complaint, or proved in the case.

12th. That the Court erred in ordering, adjudging or decreeing that complainant have or recover from the defendant the sum of \$450.00, or any sum, as the value at \$1.25 per acre, or as any value, of the lands described in the bill of complaint; with or without costs of suit.

Wherefore the defendant prays that the said decree be reversed, and that the complainant's bill of complaint herein be dismissed.

WM. D. FENTON and  
WM. SINGER, Jr.,  
Attorneys for Defendant.

State of Oregon,      }  
District of Oregon. } ss.

Due service of the within assignment of errors is hereby accepted in said district and admitted to have been made upon complainant herein this 9th day of June, 1905, by receiving a copy thereof duly certified to as such by Wm. D. Fenton, one of attorneys for defendant.

WM. W. BANKS,  
Assistant United States Attorney and Attorney for  
Complainant.

Filed June 9th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.



And afterwards, to wit, on Friday, the 9th day of June, 1905, the same being the 42d judicial day of the regular April term of said court—Present the Honorable WILLIAM B. GILBERT, United States Circuit Judge presiding—the following proceedings were had in said cause, to wit:

*United States Circuit Court, District of Oregon.*

IN EQUITY.

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

**Order Allowing Appeal.**

Having considered the defendant's petition for allowance of appeal and supersedeas from the decree made and entered herein on December 12, 1904, and amended decree made and entered herein February 25, 1905, together with the assignment of errors, on motion of Mr. Wm. D. Fenton, of counsel for defendant, the appeal of defendant is allowed as prayed, upon giving a bond in the sum of \$750.00, to be approved by this Court; which bond shall operate as a supersedeas from date of its approval.

Made and entered on June ninth, 1905.

WM. B. GILBERT,  
Judge.

Filed June 9th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.



And afterwards, to wit, on the 9th day of June, 1905, there was duly filed in said court, a bond on appeal, in words and figures as follows, to wit:

*United States Circuit Court, District of Oregon.*

UNITED STATES OF AMERICA,	}	Case No. 2658.
Complainant,		
vs.		
OREGON AND CALIFORNIA RAIL-	}	
ROAD COMPANY,		
Defendant.		

**Bond on Appeal.**

We, Oregon and California Railroad Company and R. Koehler, each of Portland, Oregon, are held and firmly bound unto the United States of America, complainant above named, in the sum of seven hundred fifty dollars to be paid unto the said complainant; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. The Oregon and Cali-

ifornia Railroad Company, defendant above named, has been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and supersedeas, from the decree entered in the above-entitled suit on December 12, 1904, and amended decree made and entered herein February 25th, 1905; and the condition of this obligation is, that if the said Oregon and California Railroad Company shall prosecute its appeal to effect, and answer the costs taxed in the decree appealed from, together with all damages interest, and cost of such appeal and supersedeas, if it (defendant) fails to make its said appeal good, thence this obligation to be void; otherwise to remian in full force.

Dated and signed on June 9th, 1905.

OREGON AND CALIFORNIA RAILROAD

COMPANY, [Seal]

By R. KOEHLER,

Second Vice-President.

R. KOEHLER. [Seal]

State of Oregon, }  
County of Multnomah. } ss.

R. Koehler and ——, being duly sworn, each for himself says: I am one of the sureties to the foregoing bond, and subscribed my name thereto. I am a resident of, and freeholder within, the State and District of Oregon, and am worth the sum of seven hundred and fifty dollars, over and above all my just debts and

liabilities, in property situated in said District, exclusive of property exempt from execution.

[Seal]

R. KOEHLER,

Subscribed and sworn to before me on June 9th, 1905.

R. A. LEITER,

Notary Public in and for Multnomah County, Oregon.

The foregoing bond approved on June 9th, 1905.

WM. B. GILBERT,

Judge.

Filed June 9th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on the 6th day of July 1905, there was duly filed in said court, a stipulation to extend time to file transcript of record on appeal, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

UNITED STATES,

Complainant,

vs.

OREGON AND CALIFORNIA RAIL-  
ROAD COMPANY,

Defendant.

} No. 2658.

### Stipulation to Extend Time to File Transcript.

It is hereby stipulated that the time of defendant may be enlarged thirty days in which to file the tran-

script herein on appeal to the United States Circuit Court of Appeal for the Ninth Circuit.

Dated July 6th, 1905.

FRANCIS J. HENEY,

United States District Attorney and Attorney for Complainant.

WM. D. FENTON,

Attorney for Defendant.

Filed June 6th, 1905. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards to wit, on Thursday, the 6th day of July, 1905, the same being the 63d judicial day of the regular April term of said court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the District of  
Oregon.*

THE UNITED STATES OF AMER-  
ICA,  
Complainant,  
vs.  
OREGON AND CALIFORNIA RAIL-  
ROAD COMPANY,  
Defendant.

Case No. 2658.  
July 6th, 1905.

**Order Extending Time to File Transcript.**

Upon stipulation of parties herein by their respective attorneys—

It is ordered that the time of defendant in which to file the transcript on appeal herein in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged thirty days.

JOHN J. DE HAVEN,

Judge.

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**Clerk's Certificate to Transcript.**

United States of America, }  
District of Oregon.        } ss.

I, J. A. Sladen, clerk of the Circuit Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 3 to



77, inclusive contain a full true and complete transcript of the record and proceedings had in said Court, in cause No. 2658, The United States of America, Plaintiff and Appellee, vs. The Oregon and California Railroad Company, Defendant and Appellant, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is thirty-eight 10/100 dollars, and that the same has been paid by the said appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this 24th day of July, A. D. 1905.

[Seal]

J. A. SLADEN,  
Clerk.

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[Endorsed]: No. 1224. United States Circuit Court of Appeals for the Ninth Circuit. The Oregon and California Railroad Company, Appellant, vs. The United States of America. Transcript of Record. Upon Appeal from the Circuit Court of the United States for the District of Oregon.

Filed August 4, 1905.

F. D. MONCKTON,  
Clerk.

